LEMBAGA HASIL DALAM NEGERI A

v.

KANG KENG TEE & ANOR

HIGH COURT MALAYA, PULAU PINANG B
MOHD AMIN FIRDAUS JC
[CRIMINAL APPEAL NOS: 43-5-2009 & 43-6-2009]
3 JUNE 2010

CONSTITUTIONAL LAW: *Proceedings - Power to institute, conduct or discontinue - Whether Director General of Inland Revenue has power to institute criminal proceedings - Whether sanction of Public Prosecutor required - Whether Inland Revenue Board given discretion - Federal Constitution, art. 145(3) - Courts of Judicature Act 1964, s. 30* C

CRIMINAL PROCEDURE: *Preliminary inquiry - Powers of Public Prosecutor - Proceedings - Power to institute, conduct or discontinue - Whether Director General of Inland Revenue has power to institute criminal proceedings - Whether sanction of Public Prosecutor required - Whether Inland Revenue Board given discretion - Federal Constitution, art. 145(3) - Courts of Judicature Act 1964, s. 30* D E

WORDS & PHRASES: *"May" - Inland Revenue Board of Malaysia Act 1995 - Whether mandatory or directory*

WORDS & PHRASES: *"Discretion" - Federal Constitution, art. 145(3)* F

The accused persons herein were charged in the magistrate's court for committing offences under the Income Tax Act 1967. A preliminary objection was raised by the accused persons before the commencement of the trial on the ground that the Director General of Inland Revenue did not have the power to institute any criminal proceedings against both the accused persons. It was submitted by counsel for the accused persons that (i) only the public prosecutor was vested with the power to institute, conduct and discontinue any proceedings, for an offence empowered by art. 145(3) of the Federal Constitution; (ii) the director general did not have the power to institute any criminal proceedings except with the sanction of the public prosecutor. In the present case, no previous sanction had been obtained by the Director General and thus it was unconstitutional, null and void. The magistrate referred the case to the High Court for the determination of the issue based on s. 30 of the Courts of Judicature Act 1964 G H I

concerning a reference of constitutional question submitted by the subordinate court. The issue that arose was (a) in view of art. 145(3) of the Federal Constitution, was the Inland Revenue Board given the discretion by the Inland Revenue Board of Malaysia Act 1995 to institute court proceeding by itself without having to obtain the authorization first from the public prosecutor.

Held (dismissing preliminary objection):

(1) Article 145(3) of the Federal Constitution confers discretion on the Attorney General in exercising his power to institute, conduct or discontinue any proceedings for an offence. Section 30(1) of the Inland Revenue Board of Malaysia Act 1995 shows that proceedings in respect of any offence may with the consent of the public prosecutor, be conducted by an officer of the board. The word 'may' only means directory and not mandatory. By choosing to use the word 'discretion' in the provision of art. 145(3) of the Federal Constitution, the Parliament empowered the Attorney General with the discretion either to exercise the said power or to delegate it to his subordinate officer or to an authorized head of any government department/body but it was nevertheless still subject to the powers of the Public Prosecutor. In view of the Attorney General's multiple duties, it was not pragmatic that he alone should exercise the said power. (paras 29-31)

(2) By virtue of ss. 6 and 10 of the Inland Revenue Board of Malaysia Act 1995, it was implicit that the Attorney General or his representative on the board had given the discretion to the IRB to institute and conduct the proceedings mentioned in s. 30(1) of the same Act but the power given was subject to the powers of the Public Prosecutor under art. 145(3) of the Federal Constitution by the mere presence of the Attorney General or his representative as members of the board (*Pai San & Ors v. PP*). (paras 44 & 45)

(3) The Inland Revenue Board was granted the discretion by the Inland Revenue Board of Malaysia Act 1995 to institute court proceedings by itself without having first to obtain the authorization from the Public Prosecutor. In consequence upon the findings of the court, the charges against both the accused persons were not unconstitutional and they did not violate art. 145(3) of the Federal Constitution. (para 49)

[Cases to be remitted to the magistrate court to be heard.]

Case(s) referred to:
Hassan Isahak v. PP [1948] 1 LNS 126 ***(refd)***
Kekatong Sdn Bhd v. Bank Bumiputra Malaysia Bhd [1998] 2 CLJ 266 CA ***(refd)***
Kyohei Hosoi v. PP [1998] 1 CLJ 1063 HC ***(refd)***
Metrobus Nationwide Sdn Bhd v. Lembaga Pelesenan Kenderaan Semenanjung Malaysia & Anor [2001] 8 CLJ 416 HC ***(refd)***
Nguang Chan Sdn Bhd v. PP [2001] 2 CLJ 16 CA ***(refd)***
Pai San & Ors v. PP [2002] 4 CLJ 547 CA ***(refd)***
Perumal v. PP [1970] 1 LNS 101 FC ***(refd)***
PP v. Chan Kam Leong [1989] 1 CLJ 805; [1989] 2 CLJ (Rep) 311 HC ***(refd)***
PP v. Datuk Harun Hj Idris & Ors [1976] 1 LNS 180 HC ***(refd)***
PP v. Lim Shui Wang & Ors [1978] 1 LNS 155 FC ***(refd)***
PP v. Syarikat Tekala Sdn Bhd [2007] 6 CLJ 43 CA ***(refd)***
Quek Gin Hong v. PP [1998] 4 CLJ Supp 515 HC ***(refd)***
Teh Cheng Poh v. PP [1978] 1 LNS 202 PC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 30
Criminal Procedure Code, ss. 129(1), 376(1), (3), 377(b), 422
Federal Constitution, art. 145(3)
Income Tax Act 1967, ss. 114(1)(a), 134(2)
Inland Revenue Board of Malaysia Act 1995, ss. 6(1), 10(d), 30(1)

For the prosecution - Umma Devi Loganathan (Legal Advisor, Pulau Pinang)
For the accused - Vijayaretnam; M/s Veizay & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Amin Firdaus JC:

Background

[1] The accused named Kang Keng Tee (No IC 610221-07-5478) in Criminal Revision No. 43-5-2010 faces the following charges in the subordinate court:

> 1. Bahawa kamu Kang Keng Tee (K/P: 610221-07-5478) pada 27 April 2005 secara sengaja dan dengan niat untuk mengelak cukai meninggalkan pendapatan bercukai daripada keuntungan bersih Perkongsian Genial Packer Trading Co. berjumlah RM3,360,851.00 yang sepatutnya dimasukkan ke dalam borang nyata Tahun Taksiran 2004 yang boleh dikenakan

cukai sebanyak RM931,023.03 dan oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 114(1)(a) Cukai Pendapatan 1967 akta yang sama.

2. Bahawa kamu Kang Keng Tee (K/P: 610221-07-5478) setelah dikehendaki di bawah s. 82(1) Akta Cukai Pendapatan, 1967 untuk menyimpan dan memegang simpan dalam jagaan yang selamat rekod - rekod yang mencukupi berkenaan pendapatan atau kerugian larasan daripada perniagaan kamu bagi tempoh tujuh tahun daripada tarikh akhir tahun tersebut telah gagal menyimpan dan memegang simpan dalam jagaan yang selamat invois belian/jualan dan buku akaun bagi tahun berakhir 31 Disember 2003 dan oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 119A(b) Akta Cukai Pendapatan 1967 dan boleh dihukum di bawah seksyen 119A Akta yang sama.

3. Bahawa kamu Kang Keng Tee (K/P: 610221-07-5478) setelah dikehendaki di bawah seksyen 82(1) Akta Cukai Pendapatan, 1967 untuk menyimpan dan memegang simpan dalam jagaan yang selamat rekod-rekod yang mencukupi berkenaan pendapatan atau kerugian larasan daripada perniagaan kamu bagi tempoh tujuh tahun daripada tarikh akhir tahun tersebut telah gagal menyimpan dan memegang simpan dalam jagaan yang selamat invois belian/jualan dan buku akaun bagi tahun berakhir 31 Disember 2004 dan oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 119A(b) Akta Cukai Pendapatan 1967 dan boleh dihukum di bawah seksyen 119A Akta yang sama.

and

4. Bahawa kamu Kang Keng Tee (K/P: 610221-07-5478) pada 8 April 2004 secara sengaja dan dengan niat untuk mengelak cukai meninggalkan pendapatan bercukai daripada keuntungan bersih Perkongsian Genial Packer Trading Co. berjumlah RM2,610,067.00 yang sepatutnya dimasukkan ke dalam borang nyata Tahun Taksiran 2003 yang boleh dikenakan cukai sebanyak RM720,568.76 dan oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 114(1)(a) Cukai Pendapatan 1967 akta yang sama.

[2] The accused named Ooi Lay See (No IC 710918-07-5230) in Criminal Revision No. 43-6-2010 faces the following charges:

1. Bahawa kamu Ooi Lay See (K/P: 710918-07-5230) pada 8 April 2004 secara sengaja dan dengan niat untuk mengelak cukai meninggalkan pendapatan bercukai daripada keuntungan bersih Perkongsian Genial Packer Trading Co. berjumlah

RM2,610,067.00 yang sepatutnya dimasukkan ke dalam borang nyata Tahun Taksiran 2003 yang boleh dikenakan cukai sebanyak RM729,421.53 dan oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 114(1)(a) Cukai Pendapatan 1967 akta yang sama.

2. Bahawa kamu Ooi Lay See (K/P: 710918-07-5230) pada 27 April 2005 secara sengaja dan dengan niat untuk mengelak cukai meninggalkan pendapatan bercukai daripada keuntungan bersih Perkongsian Genial Packer Trading Co. berjumlah RM3,360,851.00 yang sepatutnya dimasukkan ke dalam borang nyata Tahun Taksiran 2004 yang boleh dikenakan cukai sebanyak RM934,095.22 dan oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 114(1)(a) Cukai Pendapatan 1967 akta yang sama.

3. Bahawa kamu, Ooi Lay See (K/P: 710918-07-5230) sebagai kongsi utama Genial Packer Trading Co. setelah dikehendaki di bawah seksyen 86(1)(a) Akta Cukai Pendapatan, 1967 untuk mengemukakan suatu penyata di dalam Borang P bagi Tahun Taksiran 2003 pada atau sebelum 30 April 2004 kepada Ketua Pengarah Hasil Dalam Negeri dengan tiada sebab yang munasabah telah gagal mengemukakan penyata tersebut dan oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 120(1)(d) Akta Cukai Pendapatan 1967 dan boleh dihukum di bawah seksyen 120(1) Akta yang sama.

4. Bahawa kamu, Ooi Lay See (K/P: 710918-07-5230) sebagai kongsi utama Genial Packer Trading Co setelah dikehendaki di bawah seksyen 86(1)(a) Akta Cukai Pendapatan, 1967 untuk mengemukakan suatu penyata di dalam Borang P bagi Tahun Taksiran 2004 pada atau sebelum 30 April 2005 kepada Ketua Pengarah Hasil Dalam Negeri dengan tiada sebab yang munasabah telah gagal mengemukakan penyata tersebut dan oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 120(1)(d) Akta Cukai Pendapatan 1967 dan boleh dihukum di bawah seksyen 120(1) Akta yang sama.

Preliminary Objection

[3] These two cases revolved around the same issue. The learned counsel for both the accuseds/defendants raised a preliminary objection in the magistrate court before the commencement of the trial on 12 March 2010 on the ground that the Director General of Inland Revenue does not have the power to institute any criminal proceedings against both his clients, based on the following reasons:

(a) Only the public prosecutor is vested with the power to institute, conduct and discontinue any proceedings, for an offence empowered by art. 145(3) of the Federal Constitution other than proceedings before a Syariah court, a native court or a court-martial.

Article 145(3) of the Federal Constitution lays down that:

> The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah Court, a native court or a court-martial.

(b) The Director General does not have the power to institute any criminal proceedings except with the sanction of the public prosecutor.

(c) In the present case no previous sanction has been obtained by the Director General and thus it is unconstitutional, null and void.

The learned magistrate now refers this case to the High Court for the determination of the issue based on s. 30 of the Courts of Judicature Act 1964 (Act 91) concerning a reference of constitutional question submitted by the subordinate court.

Argument Of The Learned Counsel

[4] Since the corporatization of the Inland Revenue Department as the Inland Revenue Board on 16 February 1995, all the legal officers from the Attorney General's Chambers who were then serving the Inland Revenue Department and were gazetted officers under s. 376(3) of the Criminal Procedure Code, were absorbed into the Inland Revenue Board (IRB).

[5] They are now known as revenue counsels, senior revenue counsels, head of revenue solicitors, deputy revenue solicitors, and ceased to be gazetted officers under the same section of the Criminal Procedure Code. Please see s. 134(2) of the Income Tax Act 1967 (Act 53) which provides for the appointment of such officers by notification in the Gazette after consultation with the Director General of Inland Revenue.

[6] Section 376(3) of the said Code states that: A

376. Public Prosecutor.

(3) The Public Prosecutor may appoint fit and proper persons to be Deputy Public Prosecutor who shall be under the general control and direction of the Public Prosecutor and B may exercise all or any of the right and powers vested in or exercisable by the Public Prosecutor by or under this Code or any other written law except any right or powers expressed to be exercisable by the Public Prosecutor personally and he may designate any of such Deputy Public C Prosecutor as Senior Deputy Public Prosecutors.

[7] The learned counsel contended that after s. 134(2) took effect, these officers now do not possess the power given to them by s. 376(3) of the Criminal Procedure Code. Instead they are presently employed directly by the Inland Revenue Board. D

[8] He referred to s. 30(1) of the Inland Revenue Board of Malaysia Act 1995 (Act 533) which states that:

Proceedings in respect of any offence under this Act or any regulations made thereunder or any of the Acts specified in the E Second Schedule or any subsidiary legislation made under any of those Acts may with the consent of the Public Prosecutor, be conducted by an officer of the Board who is authorized to conduct such proceedings by the Director General, as the case may be.

F

[9] He submitted that it is very clear that the IRB is not given the power to institute any criminal proceedings except to conduct proceedings with the consent of the public prosecutor.

[10] The cases of *PP v. Datuk Harun Hj Idris & Ors* [1976] 1 LNS 180, *Perumal v. PP* [1970] 1 LNS 101 and *PP v. Lui Shui* G *Wang* [1978] 1 LNS 155 were cited to illustrate the meaning of "institute."

[11] *PP v. Chan Kam Leong* [1989] 1 CLJ 805; [1989] 2 CLJ (Rep) 311 and *Quek Gin Hong v. PP* [1998] 4 CLJ Supp 515 H were also cited to depict the power of the public prosecutor within this said domain.

[12] The learned counsel also referred to s. 376(1) of the Criminal Procedure Code to show that the Attorney General shall I be the public prosecutor and shall have the control and direction of all criminal prosecutions and proceedings under the Code.

[13] The Court of Appeal case of *Nguang Chan Sdn Bhd v. PP* [2001] 2 CLJ 16, *Teh Cheng Poh v. PP* [1978] 1 LNS 202 and *PP v. Syarikat Tekala Sdn Bhd* [2007] 6 CLJ 43 were also referred to support the provision of art. 145(3) of the Federal Constitution.

[14] He also argued that s. 422 of the Criminal Procedure Code does not cure the absence of a written sanction or consent. This provision cannot save IRB as there is no requirement for sanction or consent under the Income Tax Act 1967 (Act 53). The cited case of *Quek Gin Hong* was again referred to support his contention. The cases of *Hassan Isahak v. PP* [1948] 1 LNS 126 and *Kyohei Hosoi v. PP* [1998] 1 CLJ 1063 were also referred by him to show that there was no authorization obtained from the public prosecutor and thus the prosecution in these two cases was not valid.

[15] Summing up, the learned counsel pointed out that the punishment for an offence under s. 114(1)(a) of the Income Tax Act 1967 is punishable with a maximum of three year imprisonment and a special penalty of treble the amount of tax undercharged. Hence, "It is a serious offence, the papers shall have been perused by the highest legal brain, the PP. No prosecution can be instituted without his consent."

[16] It can be implied from the argument that the bottom line is that without any provision enshrined in the Income Tax Act of 1967 to obtain sanction or consent from the Attorney General, the institution of the present proceeding against the accuseds, was done without the opportunity being given to the Attorney General to apply his mind to the investigation papers in regard to the charges preferred against the accuseds.

[17] Thus, the charges against the accuseds are illegal and unconstitutional. They contravened art. 145(3) of the Federal Constitution.

Argument Of The Prosecuting Officer

[18] In a nutshell, the diligent prosecuting officer tried to ward off the preliminary objection (PO) raised by the learned counsel by counter arguing (if this court understands him correctly) that the PO was made too hastily without giving the prosecution the opportunity to adduce proof that IRB is actually clothed with the power to handle the prosecution in this case against the accused.

[19] The prosecution in fact has been empowered to carry out the prosecution by the letter/document of authorization dated the 5 July 2002 given under s. 377(b) of the Criminal Procedure Code as seen on p. 33 of the notes of evidence of the proceeding in the lower court.

[20] The letter dated 12 March 2008 to the Attorney General from the Director General of the Inland Revenue Board and the reply from him dated 4 April 2008 are relevant to the issue.

[21] It was argued that both the said letter and the reply in both cases must be read together and the answer "Meneruskan dengan pendakwaan kes-kes ke mahkamah seperti biasa" is likened to consent from the Attorney General to initiate the prosecution as done by the Inland Revenue Board before all this while. The answer from the Attorney General's Chambers is clear that the deputy public prosecutor concerned had carried out her duty in accordance with art. 145(3) of the Federal Constitution read together with s. 376 and 377 of the Criminal Procedure Code.

[22] If the IRB had acted contrary to the directive given by the Attorney General as seen in its letter dated 4 April 2008, then it could be said that the present proceeding is *ultra vires* and not in accordance with art. 145(3) resulting in this case being illegal as what had happened to the *Repco* case.

[23] It was further argued that "pemberian kuasa" under s. 377(b) of the Criminal Procedure Code given by the deputy public prosecutor and the said letter dated 4 April 2008 titled "Kebenaran Untuk Mendakwa Bagi Kes Saman Jenayah Di Lembaga Hasil Dalam Negeri Malaysia" by the Attorney General both equated to "written authorization" to institute prosecution by the IRB.

[24] It was pointed out that the decision of another High Court here given on 11 March 2008 which did not favour the IRB was arrived at without hearing the merits of the case for the IRB and no written judgment for the decision was given.

[25] Among "consent," "sanction" and "authorization letter," the last one is more relevant to the cause of IRB on account of the two mentioned documents (stated above) given by the Attorney General's Chambers because the charge under s. 114 of the Income Tax Act 1967 is not included among the offences stated in s. 129(1) of the Criminal Procedure Code.

[26] Section 30(1) of the Inland Revenue Board of Malaysia Act 1995 clearly provides that written authorization from the public prosecutor is necessary for IRB to conduct prosecution and in doing so, it is subject to whatever directive issued by the public prosecutor.

[27] Thus, such prosecution carried out by IRB until today has been in compliance with the law and with authorization from the public prosecutor and the preliminary objection (PO) raised is baseless and should be dismissed.

Issue

[28] In view of art. 145(3) of the Federal Constitution, is the Inland Revenue Board given the discretion by the Inland Revenue Board of Malaysia Act 1995 to institute court proceeding by itself without having to obtain the authorization first from the public prosecutor?

Findings Of The Court

[29] The court notes that art. 145(3) of the Federal Constitution confers discretion on the Attorney General in exercising his power to institute, conduct or discontinue any proceedings for an offence ...

[30] A scrutiny of s. 30(1) of the Inland Revenue Board of Malaysia Act 1995 shows that "Proceedings in respect of any offence ... may with the consent of the public prosecutor, be conducted by an officer of the board ..."

[31] In *Metrobus Nationwide Sdn Bhd v. Lembaga Pelesenan Kenderaan Semenanjung Malaysia & Anor* [2001] 8 CLJ 416, the High Court held that:

> In general acceptation, a proceeding is an act which is done by the authority or direction of the court, express or implied, an act necessary to be done in order to attain a given end; a prescribed mode of action for carrying into effect a legal right ... including all possible steps in action from its commencement to the execution of judgement.

[32] In Free Online Dictionary, Thesaurus and Encyclopedia (Google) on the internet, the word "proceeding" *inter alia*, means the instituting or conducting of legal action (*The American Heritage Dictionary of the English Language*, 4th edn, 2000).

[33] It further defines "proceeding" - legal definition: A

> The orderly sequence of events that constitute the progression of a lawsuit or judicial procedure from the time of commencement, through all acts and occurrences, until and including the execution of the final judgement.

B

[34] In the Court of Appeal case of *Kekatong Sdn Bhd v. Bank Bumiputra Malaysia Bhd* [1998] 2 CLJ 266, it held that:

> When a provision in a statute uses permissive language such as "may", it is a question of legislature intent, dependent upon a number of factors, whether the intended result is mandatory or directory. It is therefore wrong to assume as a matter of course that whenever Parliament uses the word "may" in a statute it never means "must."

C

[35] Therefore guided by the definition on "proceeding" seen above, it not only incorporates the concept of instituting criminal proceeding but also the conducting of such proceeding. D

[36] The definition of "may" as gleaned from the said *Kekatong* case decided by the Court of Appeal means that to find out whether the intended result is mandatory or directory within the context of s. 30(1) of Act 533 in this present case, this court must be aware that it depends upon a number of factors. E

[37] Reverting to s. 30(1) of Act 533, this Court views that the word "may" only means directory and not mandatory. F

[38] "Proceedings" includes the instituting of criminal proceeding and conducting it.

[39] The court views that by choosing to use the word "discretion" in the provision of art. 145(3) of the Federal Constitution, it can only mean that Parliament empowers the Attorney General with the discretion either to exercise the said power himself or to delegate it to his subordinate officer or to an authorized head of any Government Department/Body but it is nevertheless still subject to the powers of the public prosecutor. G H

[40] Probably, in view of the multiple duties and some of them are very important that the Attorney General has to perform for the nation, it is not pragmatic that he alone should exercise the said power. I

[41] In other words, the IRB is given discretion when instituting proceedings in respect of any offence under Act 533 or any regulations made thereunder or any of the Acts specified in the second schedule or any subsidiary legislation made under any of those Acts on whether it thinks that it needs to ask for the consent of the public prosecutor to do so, that is to institute and conduct such proceedings. This court views that it is not mandatory that it must first seek such consent or sanction or written authorization to do so.

[42] This is so because s. 6(1) of Act 533 states that the inland revenue board shall consists of the Attorney General or his representative among others as members of its board.

[43] Section 10 of the same Act lists down the various functions of the board and s. 10(d) states:

> to perform such other functions as are conferred on the Board by any other written law.

[44] By virtue of the existence of ss. 6 and 10 embodied in Act 533, it is implicit that the Attorney General or his representative on the Board has given the discretion to the IRB to institute and conduct the proceedings mentioned in s. 30(1) of the same Act but the power given is subject to the powers of the public prosecutor under art. 145(3) of the Federal Constitution by the mere presence of the Attorney General or his representative as members of the board.

[45] In coming to this conclusion, the court is guided by the Court of Appeal case of *Pai San & Ors v. PP* [2002] 4 CLJ 547, Abdul Hamid Mohamad JCA (as his Lordship then was) opined:

> In our view, the judgments of the courts have been quite consistent. A provision giving the power to institute, conduct or discontinue a proceeding for an offence is unconstitutional and void if it is exercisable independently of, or if it is parallel to the powers vested in the Public Prosecutor by Article 145(3) of the Federal Constitution.
>
> Any authorization given pursuant to such (void) provision is void and the prosecution instituted and conducted by a person so authorized is void.
>
> However, so long as the power given to another person is subject to the powers of the Public Prosecutor under Article 145(3) of the Federal Constitution, it is valid.

[46] As noted by the learned former Chief Justice, in such a situation "the powers of the public prosecutor is not taken away from him and given to somebody else. His powers remain intact. It is he and he alone who may institute or give consent for a prosecution. This is consistent with his powers under art. 145(3) of the Federal Constitution." A B

[47] The contention of the learned counsel that Penang High Court Criminal Revision No. 43-3-09 supports his PO is baseless as it was decided on an expired sanction.

[48] The court cannot comment on the other case (Penang High Court Criminal Revision No. 43-17-2007) as the facts are too scanty. C

[49] Therefore the Inland Revenue Board is granted the discretion by the Inland Revenue Board of Malaysia Act 1995 to institute court proceeding by itself without having first to obtain the authorization from the public prosecutor. In consequence upon the findings of the court, the charges against both the accuseds are not unconstitutional and they do not violate art. 145(3) of the Federal Constitution. D E

[50] For the aforesaid reasons, the same preliminary objection raised in both cases is dismissed and that both cases are to be remitted to the magistrate court to be heard. F G H I